



# MINUTES

## Executive Board

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**Three hundred twenty-first Meeting  
Monday and Tuesday  
November 22 & 23, 2004**

**LCR 1 & 2  
State Capitol Building  
Pierre, South Dakota**

### **Monday, November 22, 2004**

The three hundred twenty-first meeting of the Legislative Research Council Executive Board was called to order by Chair Representative Orville B. Smidt at 9:25 a.m. (CT), November 22, 2004, in LCR 1 and 2 of the State Capitol, Pierre, South Dakota.

A quorum was determined with the following members answering the roll call: Senators Tom Dempster, H. Paul Dennert, Brock L. Greenfield, and Gil Koetzle; and Representatives Julie Bartling, Rebekah Craddock, Phyllis M. Heineman, Claire B. Konold, Gerald Lange, Matthew Michels, and Orville B. Smidt. Senators Arnold M. Brown and Royal J. "Mac" McCracken; and Representative Ron Williamson were excused. Senator Ed Olson was excused on November 22, 2004, and in attendance on November 23, 2004.

Staff members present included James Fry, Director; and Teri Retrum, Senior Legislative Secretary.

**(NOTE:** For sake of continuity, the following minutes are not necessarily in chronological order. Also, all referenced documents are on file with the Master Minutes.)

**(Clarification:** Voice votes that prevail with all members present voting "aye" will carry the disposition language "prevailed unanimously." Voice votes that prevail with a majority of all members present voting "aye" will carry the disposition language "prevailed." Voice votes that prevail without all members present voting "aye" will list those members casting "nay" votes if so requested by the dissenting voter.)

### **Approval of Minutes**

**REPRESENTATIVE LANGE MOVED, SECONDED BY REPRESENTATIVE KONOLD, THAT THE EXECUTIVE BOARD APPROVE THE MINUTES OF THE AUGUST 2 AND OCTOBER 25, 2004, MEETINGS, AS PRINTED AND MAILED. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

### **Approval of Agenda**

**Chair Orville Smidt** informed the Board that Senator William Earley will comment on the Appropriations Subcommittee on FTEs later in the day, **REPRESENTATIVE KONOLD MOVED, SECONDED BY REPRESENTATIVE HEINEMAN, THAT THE BOARD INCORPORATE SENATOR EARLEY'S COMMENTS INTO ITS AGENDA AND APPROVE**

**THE AGENDA WITH THAT ADDITION. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

**Director's Report and Correspondence**

**Financial Statement—Fiscal Year 2005**

Director Fry reviewed the FY 2005 financial statement for the period ending October 31, 2004 **(Document #1)**. He said that \$190,000 out of the available dollars for intergovernmental cooperation will be spent on dues for next year. Mr. Fry said that the budget is in excellent shape and on track.

**Redistricting Update**

Mr. Fry reported that a letter has been sent to **District Court Judge Karen Schreier** requesting more information on what is an acceptable number of minorities in a district. He said that the request was timely filed and that a response has not been received from Judge Schreier.

**Correspondence**

Mr. Fry directed the Board to a letter addressed to **Professor Angeline Lavin**, School of Business, University of South Dakota (USD), regarding a Request For Proposal (RFP) for the creation of a legislative economic advisory group **(Document #2)**. Another letter, addressed to **Mr. Randy Stuefen**, Director of Research, Business Research Bureau (BRB), USD, inviting the BRB to submit a proposal to the LRC regarding the RFP, was also brought to the Board's attention **(Document #3)**.

**Mr. Reed Holwegner**, Chief Fiscal Analyst, LRC, said that the Legislature should be able to accurately review the amount of revenue available for the state general fund. He said that additional information would be forthcoming.

**Representative Phyllis Heineman** asked whether the request is for a one-time economic review.

Mr. Holwegner said that an advice group of three individuals would develop an economic analysis of the state for a one-time review and perhaps be available from time-to-time to advise the Legislature on the state's economy.

**Senator Tom Dempster** said that delving into economics is a dynamic process. Senator Dempster said that there is a difference between governmental accounting and generational accounting—for instance Social Security, Medicare, and Medicaid assumptions considering that the "baby boomer" generation is coming into those types of entitlements. He noted the book Running on Empty by Pete Peterson who has said that he is available to speak to the Board regarding the state of the economy, if the Board requests. According to Mr. Peterson, Senator Dempster said that it would cost \$200,000 per household in the future to fund Social Security and Medicare.

**Representative Matthew Michels** expressed support for Senator Dempsters' comments and said that he would be interested in hearing from Mr. Peterson.

**Representative Rebekah Cradduck** said that in her opinion the Legislature should have access to its own financial information and have its own revenue estimates to consider. Representative Cradduck also said that ultimately the cost of the contract will determine the feasibility for the Legislature to enter into such an endeavor.

### **Use of Legislative Rooms**

Mr. Fry noted a letter from **Ms. Rachel Hansen**, South Dakota Right to Life (SDRTL) State Director, requesting to use Rooms 412 and 413 to conduct the organization's SDRTL Oratory Contest open to high school juniors and seniors across the state (**Document #4**).

**Senator Brock Greenfield** said that in his opinion it would be a better and perhaps more meaningful experience for the high school students to be able to conduct the oratory contest in the chambers rather than the meeting rooms.

Senator Dempster asked what types of groups have used the rooms and chambers in the past.

Mr. Fry responded that once in a while nonprofit organizations or schools have been allowed to use the facilities; however, the meeting rooms are limited to use by state agencies so that the state is not in competition with local area meeting places. The South Dakota School Administrators has used the chambers for a delegate assembly and the Children's Home Society also has used them for that purpose.

Ms. Hansen said that she thought it would be a great experience for the students to use the chambers, if that were an option. She said that twenty-four students will be participating, and the contest will be held during the weeks between the thirty-ninth and fortieth days of the 2005 Legislative Session. Ms. Hansen said that there also will be a few parents to observe and the judges in attendance and that a big crowd is not expected.

**Representatives Julie Bartling** and **Claire Konold**, and **Senator Gil Koetzle** questioned the practicality of holding the contest in the chambers because legislators will have papers and other information on their desks. Board members agreed that the legislators could store their materials in their desks.

Chair Smidt told Ms. Hansen that a \$500 deposit is required before using the chambers; however, that amount is refunded, if the chambers are left in the same and proper condition when the group finishes its proceedings. Ms. Hansen agreed to that requirement.

**SENATOR GREENFIELD MOVED, SECONDED BY REPRESENTATIVE HEINEMAN, THAT THE EXECUTIVE BOARD APPROVE USE OF THE LEGISLATIVE CHAMBERS BY SDRTL ON A DAY DURING THE WEEKS THAT THE 2005 LEGISLATURE IS IN RECESS (BETWEEN THE THIRTY-NINTH AND FORTIETH DAYS) FOR A SDRTL ORATORY CONTEST. MOTION PREVAILED ON A VOICE VOTE.**

Mr. Fry said that the letter addressed to South Dakota's congressional delegation from the interim Public University Education Curriculum Study Committee (**Document #5**) regarding findings during the course of its study will be further discussed during the interim committee reports' portion of the agenda.

**Document #6** is a letter addressed to **Mr. Paul Kinsman**, Commissioner, Bureau of Administration, concerning legislative parking before session. Mr. Fry said that there has been a need expressed by legislators for legislative parking on the Monday before session begins.

Representative Konold said that the Speaker of the House and the President Pro tempore of the Senate should at least have reserved parking for the duration of the session because, due to the nature of their jobs, they sometimes need to attend to other duties and also make timely meeting and session deliberations.

**REPRESENTATIVE HEINEMAN MOVED, SECONDED BY REPRESENTATIVE LANGE, THAT THE EXECUTIVE BOARD REQUEST TWO RESERVED PARKING SPACES FOR USE BY THE SPEAKER OF THE HOUSE AND THE PRESIDENT PRO TEMPORE OF THE SENATE DURING THE 2005 LEGISLATIVE SESSION. THE MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

#### **Education Commission of the States**

Mr. Fry said that the Board decided to assign two legislators to the Education Commission of the States. He said that the two legislators usually have been the chairs of the education committees.

**REPRESENTATIVE MICHELS MOVED, SECONDED BY SENATOR DENNERT, THAT THE EXECUTIVE BOARD APPOINT THE RESPECTIVE CHAIRS OF THE SENATE AND HOUSE EDUCATION COMMITTEES TO SERVE AS SOUTH DAKOTA'S DELEGATES TO THE EDUCATION COMMISSION OF THE STATES. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

#### **Technological Update**

Mr. Fry reported on the technical updates in Legislative Conference Rooms 1 and 2 and Rooms 412 and 413. He said that power cords have been installed under the tables in LCR #1 and will be installed in the other three rooms over the summer. Mr. Fry said that currently a public wireless network is available for lobbyists and the public to use. He said that the cost is about \$10,000; the LRC will be making payments to the Bureau of Information and Telecommunications, and over the years that amount will be paid by the lobbyists groups.

#### **Doctor-of-the-Day Program**

**REPRESENTATIVE MICHELS MOVED, SECONDED BY REPRESENTATIVE KONOLD, THAT THE EXECUTIVE BOARD APPROVE THE DOCTOR-OF-THE-DAY PROGRAM FOR THE 2005 LEGISLATIVE SESSION. MOTION PREVAILED ON A VOICE VOTE.**

## **Room User Fee**

**SENATOR GREENFIELD MOVED, SECONDED BY REPRESENTATIVE CRADDUCK, THAT THE EXECUTIVE BOARD WAIVE THE FEE FOR USE OF LEGISLATIVE COMMITTEE ROOMS DURING THE 2005 LEGISLATIVE SESSION. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

Representative Heineman commented that there should be more clearly defined guidelines outlining when to allow outside use of the legislative rooms and chambers.

Chair Smidt agreed and said that the new Board perhaps could work on those guidelines.

## **Legislative Printing Contract**

Mr. Fry said that the Legislature is continuing to reduce the number of bills printed and is requesting legislators to ask for paper copies of bills, journals, etc. He referred the Board's attention to the agreement from the State Publishing Company to extend the contract for furnishing printed legislative documents (**Document #7**).

**SENATOR DEMPSTER MOVED, SECONDED BY REPRESENTATIVE MICHELS, THAT THE EXECUTIVE BOARD AWARD TO STATE PUBLISHING COMPANY OF PIERRE, SOUTH DAKOTA, THE LEGISLATIVE PRINTING CONTRACT (BILLS AND RESOLUTIONS, DAILY JOURNALS, INDEX, SESSION LAWS, AND THE 2005 *OFFICIAL DIRECTORY AND RULES OF THE SOUTH DAKOTA LEGISLATURE* (REDBOOK). MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

## **Legislative Photographer**

Mr. Fry referenced the bid from Samuels Studio, Edgar W. Matuska, Master Photographer, Rapid City, South Dakota, to provide the portraits and composites of both legislative chambers and the group photographs of the pages and interns for the 2005 Legislative Session (**Document #8**). He said that Mr. Matuska has provided excellent service to the Legislature in the past and is well respected. Mr. Fry also noted that Mr. Matuska provides the service at less expense than previously.

**REPRESENTATIVE KONOLD MOVED, SECONDED BY REPRESENTATIVE CRADDUCK, THAT THE EXECUTIVE BOARD APPROVE THE BID FROM SAMUELS STUDIO TO PROVIDE THE PHOTOGRAPHY FOR THE 2005 AND 2006 LEGISLATIVE SESSIONS. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

## **Legislative Meeting Rooms**

Representative Michels said that he has been concerned about how the legislative meeting rooms have been scheduled the first two weeks of session, so he requested the LRC to block out those rooms for potential legislative use. He also said that in his opinion it is unfair to expect the appropriators to hear the same information from the agencies repeatedly and

suggested that perhaps a larger area could be used so that all interested legislators can hear the information, and the agencies only have to present the information once.

Discussion ensued. Representative Cradduck said that it would be a great exercise for the agencies to have the attention of 105 legislators instead of only the Appropriations Committee, as long as the agencies can be guaranteed that they will have to present the information only once. Representative Bartling expressed support for the idea. She said that in her opinion the Department of Education certainly would benefit from only one presentation. Senator Greenfield said that it is a good idea; however, he expressed concern about whether it would be an orderly process. Representative Michels said he envisions that the co-chairs of the Appropriations Committee would conduct the meeting; legislators would be allowed to ask questions, and perhaps some type of file could be kept on the information presented. Responding to Senator Dennert, Representative Michels said that this concept would be only for the presentations from the state agencies.

**REPRESENTATIVE CRADDUCK MOVED, SECONDED BY SENATOR DEMPSTER, THAT THE EXECUTIVE BOARD PURSUE FURTHER DISCUSSION ON THE LEGISLATIVE MEETING ROOMS AND THE AGENCY HEARINGS DURING SESSION. MOTION PREVAILED UNANIMOUSLY ON A VOICE.**

Responding to Mr. Fry's request for concerns to be brought before the Legislative Procedure Committee, Representative Michels requested that consideration be given to continuing the practice of working on any Saturdays early in the legislative session rather than later when setting the 2005 Legislative Calendar.

The following correspondence was included in the director's report:

- Copies of a letter dated August 16, 2004, addressed to **The Honorable Robert A. Miller**, Chair, Constitutional Revision Commission, relaying an Executive Board request and direction to the Commission that it include discussion of the style and form veto, amendatory veto, and line item veto in its scope of study (**Document #9**) and the Commission's response (**Document #10**).
- Copies of a letter dated October 12, 2004, from **Senator Ed Olson**, Chair, Department of Education Agency Review Committee, regarding the Committee's efforts to find the right questions to ask in order to get information to adequately review the Department of Education and the department's use of the Baldrige Model (**Document #11**) and the committee's request that the Executive Board discuss the Baldrige Model and other methods to make agency reviews more valuable; and
- For informational purposes, House Concurrent Resolution No. 1023, Recognizing the investment of the South Dakota taxpayers in the state's K-12 public education system and the need for accountability to the taxpayers for that investment.

**West River Work Group**

Senator Dennert distributed copies of a draft meeting report from the West River Issues Working Group (**Document #12**). He said that the group discussed the following issues:

- Hunting mountain lions;
- Aerial hunting;
- Prairie dog problems;
- Ferret recovery;
- Wildlife budget—should it be in the hands of the Game, Fish and Parks Commission or should it be in the hands of the Legislature—the preference was to leave it with the Commission;
- Land acquisition; and
- Communication among all groups.

Senator Dennert said that the most discussed and controversial issue was the "open fields doctrine" where a game warden can arbitrarily go onto private land. He said that the attendees at the West River meeting were mostly landowners; the attendees at the East River meetings were mostly hunters. Senator Dennert said that the Work Group should finish its meetings next week and that communication among all interested parties is key to a cooperative effort.

Responding to Representative Lange, Senator Dennert said it is possible that the large attendance of hunters at the Aberdeen meeting could have been orchestrated by groups putting forward concerns of the hunters.

The Executive Board recessed at 10:40 a.m. and reconvened at 10:55 a.m.

### **Report of the Department of Education (DOE)**

**Mr. Wade Pogany** and **Mr. Gary Skoglund**, Department of Education, distributed copies of the following:

1. Power Point presentation titled "Putting Kids First" (**Document #13**);
2. Profile of South Dakota Schools (**Document #14**);
3. Governor Rounds' 2010 Education Initiative Themes from preK-12 regional meetings (**Document #15**);
4. New South Dakota High School Graduation Requirements (**Document #16**);
5. South Dakota Department of Education graph showing DOE core values (**Document #17**);
6. South Dakota's Accreditation System Working in Alignment with School Improvement (**Document #18**); and
7. No Child Left Behind (NCLB) 2004 Report Card (**Document #19**).

Mr. Pogany said that the Department of Education would most likely be interested in conducting a whole education program for the Legislature, if interested, extraneous to the appropriations process.

Mr. Pogany said that NCLB has really focused on student achievement and improvement. Regarding how South Dakota students compare to other states, Mr. Pogany said that there are many models used to measure student performance and that South Dakota students are doing very well.

Mr. Skoglund reviewed the Power Point presentation. He said that 85 percent of 716 South Dakota schools made adequate yearly progress; 109 (15 percent) were schools in improvement; 163 school were on alert in 2003. Mr. Skoglund said that schools that fell into the needs improvement category were mostly middle schools. Also, schools in need of improvement were schools with a high minority enrollment. Mr. Skoglund discussed Dakota STEP results which showed improvement in all student sub-groups—special education students; limited English proficiency students; Native American students; and economically disadvantaged students. Mr. Skoglund reviewed several graphs showing test results and progress and said that he is proud of the progress the state has made.

Responding to committee questions, Mr. Skoglund said that Native American students in South Dakota are not performing as well as they are in surrounding states; however, the students are making progress. Mr. Skoglund said that students who take a more challenging curriculum perform higher on the ACT test. Also, in South Dakota, Mr. Skoglund said that eighth grade students scored an average of 285 out of 291 in math. Mr. Skoglund said that Governor Rounds has instituted the 2010 Education Initiative, which will set goals that the state will work toward in education achievement. He said that the state needs to improve focus in certain areas and it will take resources to accomplish that improvement.

To clear up confusion expressed by Representative Michels on the graduation requirements needed to qualify for a South Dakota Opportunity Scholarship, Mr. Pogany said that the credits are the minimum required, not the maximum. Representative Michels said that it would be helpful if the DOE would post that information on its Web site. Mr. Pogany said that the information is on its Web site.

Responding to Representative Heineman, Mr. Pogany said that the Legislature fits into the education equation by reviewing financial goals and operational goals and perhaps reviewing where South Dakota stands nationally in teachers' salaries. He said that South Dakota ranks thirty-sixth in per student spending.

Representative Michels said that education financial matters are always an issue because the Legislature represents the people and must be responsible to them.

### **Report of Supreme Court Opinions Subcommittee**

Representative Michels reported that the Supreme Court Opinions Subcommittee reviewed one opinion on whether soliciting murder should be in the same category as committing murder. He said that the subcommittee offered no recommendation on this matter and that the Code Commission is meeting on its legality or illegality.



**SENATOR DEMPSTER MOVED, SECONDED BY REPRESENTATIVE KONOLD, THAT THE EXECUTIVE BOARD APPROVE THE REPORT OF THE SUPREME COURT OPINIONS SUBCOMMITTEE. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

#### **Report of Space Planning Subcommittee**

Mr. Fry said that the South Dakota Bureau of Administration is undergoing an evaluation of extra spaces in the Capitol. Mr. Fry said that he is convinced that fourth floor, including the Bureau of Personnel, will become legislative space. He said that the state of the art committee room will require expenditures and that the Executive Board will have to address that issue. The room will be able to accommodate other agencies in the Capitol and other agencies in state government.

**REPRESENTATIVE KONOLD MOVED, SECONDED BY SENATOR DENNERT, THAT THE EXECUTIVE BOARD APPROVE \$500,000 TO REFURBISH THE CURRENT LOCATION OF THE BUREAU OF PERSONNEL FOR A STATE OF THE ART CONFERENCE ROOM.**

Senator Greenfield asked if \$500,000 would be enough money to accomplish the renovation.

Mr. Fry responded that the \$500,000 includes what it would cost for a studio for the DDN also, so the amount is close to the right amount.

Chair Smidt stated that he appreciated that the room would offer opportunities for use by other agencies.

Representative Cradduck said that the room would be wonderful for individuals who want to testify before interim committees but cannot travel to Pierre.

Mr. Fry said that, in some instances, it also would be more convenient for out-of-state presenters.

**MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

The Board recessed at 12:05 p.m. and reconvened at 1:35 p.m.

#### **Report of Computer Technology Subcommittee**

Representative Heineman said that the subcommittee talked about computer training and explored the possibility of making computer training mandatory for all legislators.

**Ms. Lou Adamson**, Legislative Information System Coordinator, reported on a survey sent to all legislators requesting them to respond to which computer training that they want to receive. She said that most responded that they want e-mail training, training on WestLaw®, and Internet training.

Representative Heineman said that the subcommittee is asking committee chairs to be mindful of training days and to focus on technological training.

Ms. Adamson said that the Legislature is trying to cut down on bill books and journals. Also, she said that a lot of information is on the Internet before the paper information is delivered. Ms. Adamson said that if a legislator has subscribed through My LRC that legislator will receive e-mails when information is available. She said that the attempt is to try to phase out paper copies of everything and to try to use the technology that is being bought. Ms. Adamson said that every office and committee room will have bill books and there will be a limited amount on the floor.

Representative Michels said that he personally does not have a problem with mandatory attendance but that it should be discussed with the committee chairs.

Representative Heineman suggested that legislators can be asked to sign up for a training session when they pick up their computers.

Ms. Adamson said that legislators are required to sign other documents when computers are received so it should not be a problem to add this signature.

Ms. Adamson distributed copies of a proposed outline for 2005 Legislative Session Training **(Document #20)** and the 2005 Legislative Session Bill Book Count and Journal Count **(Document #21)**.

After brief discussion on training days and times, **SENATOR GREENFIELD MOVED, SECONDED BY REPRESENTATIVE CRADDUCK, THAT THE EXECUTIVE BOARD APPROVE THE REPORT OF THE COMPUTER TECHNOLOGY SUBCOMMITTEE AND DIRECT STAFF TO DRAFT A LETTER TO COMMITTEE CHAIRS ASKING FOR THEIR SUPPORT FOR COMPUTER TRAINING. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

### **Report of Legislative Interns Subcommittee**

**Mr. David Ortbahn**, Principal Research Analyst, LRC Intern Coordinator, distributed copies of the following:

- Breakdown of 2005 Legislative Intern Applications by School and Party Affiliation **(Document #22)**; and
- Summary of Intern Applications (1993-2005) **(Document #23)**.

Mr. Ortbahn said that the intern applicants were highly qualified this year.

Representative Heineman said every year very talented young people are hired as interns and suggested the possibility of some type of intern handbook so that each legislator would know ways in which to utilize the interns' capabilities.

Representative Michels agreed.

**SENATOR KOETZLE MOVED, SECONDED BY REPRESENTATIVE CRADDUCK, THAT THE EXECUTIVE BOARD APPROVE THE REPORT OF THE LEGISLATIVE INTERNS SUBCOMMITTEE. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

#### **Report of the Special Committee on Appropriations FTE Subcommittee**

**Senator William Earley** reported that the largest FTE increase will be for the Board of Regents. He commented that the subcommittee was concerned about FTEs being funded but not being filled. Senator Earley said that the subcommittee tried to find ways to straighten out this practice. He said that draft legislation is being considered to require an agency to review the FTE situation when it presents its budget request. If an agency has a FTE vacancy over twelve months, the agency would lose that FTE.

**REPRESENTATIVE HEINEMAN MOVED, SECONDED BY SENATOR GREENFIELD, THAT THE EXECUTIVE BOARD ACCEPT THE REPORT OF THE SPECIAL COMMITTEE ON APPROPRIATIONS FTE SUBCOMMITTEE. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

#### **Reports of Interim Committees**

(Note: Copies of each interim draft committee report are compiled and labeled **Document #24.**)

Government Operations and Audit Committee—**Mr. Martin Guindon**, Auditor General, and **Mr. Rich Hornak**, Legislative Audit, reviewed committee activity and the list of legislation adopted by the committee.

**Ms. Annie Mehlhaff**, Principal Fiscal Analyst, LRC, gave a brief update on the Department of Corrections portion of the Government Operations and Audit Committee. She said that the committee solicited testimony from parents who have children in the system. Ms. Mehlhaff reported that of about two hundred letters that were sent out, four parents provided testimony—one of those parents wrote a letter. Three out of the four parents had positive input. Of the two parents who expressed concerns, one issue is resolved and one is still on-going.

**REPRESENTATIVE CRADDUCK MOVED, SECONDED BY SENATOR DENNERT, THAT THE EXECUTIVE BOARD ACCEPT THE REPORT OF THE GOVERNMENT OPERATIONS AND AUDIT COMMITTEE. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

Code Commission—**Mr. Doug Decker**, Code Counsel, said that this is the first year that Thomson West has published the Code and that there were no major problems with that publishing. He commented that the move to Thomson West has been well received.

**REPRESENTATIVE KONOLD MOVED, SECONDED BY REPRESENTATIVE LANGE, THAT THE EXECUTIVE BOARD APPROVE THE REPORT OF THE CODE COMMISSION. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

Rules Review Committee—Mr. Decker reported that the committee reviewed seventy-four sets of rules. He noted that certain fee increases relating to hunting and fishing licenses were an area of concern, but the issue was eventually resolved and the fee increases were accepted.

**SENATOR DEMPSTER MOVED, SECONDED BY REPRESENTATIVE MICHELS, THAT THE EXECUTIVE BOARD APPROVE THE REPORT OF THE RULES REVIEW COMMITTEE. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

Education Agency Review Committee—**Ms. Claire Cholik**, Senior Research Analyst, discussed the activity of the committee.

Representative Heineman addressed some of the concerns that the committee experienced with exactly how the agency review committees can make it clear what information they want to receive from the agencies. She noted the Baldrige Model as perhaps a starting point that could be used in the deliberations of the review committees.

**SENATOR DENNERT MOVED, SECONDED BY REPRESENTATIVE KONOLD, THAT THE EXECUTIVE BOARD APPROVE THE REPORT OF THE EDUCATION AGENCY REVIEW COMMITTEE. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

Bureau of Information and Telecommunications Agency Review Committee—**Mr. Aaron Olson**, Fiscal Analyst, reported on the activity of the committee.

**REPRESENTATIVE KONOLD MOVED, SECONDED BY REPRESENTATIVE HEINEMAN, THAT THE EXECUTIVE BOARD APPROVE THE REPORT OF THE BUREAU OF INFORMATION AND TELECOMMUNICATIONS AGENCY REVIEW COMMITTEE. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

Property Assessment Study Committee—**Mr. Fred Baatz**, Principal Research Analyst, reported on the activity of the committee. He commented that limitation of sales that assessors use to value property received quite a bit of discussion. Mr. Baatz said that the committee approved eight out of fifteen legislative proposals.

**REPRESENTATIVE CRADDUCK MOVED, SECONDED BY REPRESENTATIVE BARTLING, THAT THE EXECUTIVE BOARD APPROVE THE REPORT OF THE PROPERTY ASSESSMENT STUDY COMMITTEE. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

Public University Education Curricula Study Committee—**Representative Jean Hunhoff**, Chair of the committee, addressed the concerns of the committee via teleconference. Representative Hunhoff explained the impetus for the committee's request to address a letter to South Dakota's congressional delegation expressing its concern about funding federal NCLB mandates. Representative Hunhoff also commented on the committee's survey sent to teachers in South Dakota.

**REPRESENTATIVE CRADDUCK MOVED, SECONDED BY SENATOR KOETZLE, THAT THE EXECUTIVE BOARD APPROVE THE REPORT OF THE PUBLIC UNIVERSITY**

**EDUCATION CURRICULA STUDY COMMITTEE. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

Subcommittee Report on Farm Machinery Dealers—**Representative Claire Konold**, Chair of the subcommittee, distributed copies of a summary of the subcommittee's deliberations, letters from interested parties, and minutes from the first and final subcommittee meeting. (These materials are compiled and labeled **Document #25**). Representative Konold said that the issue remains unresolved between the dealers who want to leave the current law unchanged and the dealer manufacturers who continue to state that they will not offer any new dealership contracts in South Dakota until the law is changed.

**SENATOR DEMPSTER MOVED, SECONDED BY REPRESENTATIVE HEINEMAN, THAT THE EXECUTIVE BOARD APPROVE THE REPORT OF THE SUBCOMMITTEE ON FARM MACHINERY DEALERS. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

The Board recessed at 3:35 p.m. and reconvened at 3:50 p.m.

**Presentation of Draft Issue Memorandums**

Legislative Research Council staff reviewed the following draft Issue Memorandums:

Issue Memorandum 04-01—Liquidated Costs and Surcharge Collected by the Unified Judicial System—**Mr. Reed Holwegner**, Chief Fiscal Analyst.

**SENATOR GREENFIELD MOVED, SECONDED BY SENATOR DEMPSTER, THAT THE EXECUTIVE BOARD ACCEPT ISSUE MEMORANDUM 04-01 FOR DISTRIBUTION TO ALL LEGISLATORS. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

Issue Memorandum 04-02—Medicaid—A Study Focusing on Cost Containment, Demographics and Comparison with the Systems in Other States—**Ms. Sue Cichos**, Senior Fiscal Analyst.

**SENATOR GREENFIELD MOVED, SECONDED BY SENATOR DEMPSTER, THAT THE EXECUTIVE BOARD ACCEPT ISSUE MEMORANDUM 04-02 FOR DISTRIBUTION TO ALL LEGISLATORS. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

Issue Memorandum 04-03—911 System—**Mr. Aaron Olson**, Fiscal Analyst.

**SENATOR KOETZLE MOVED, SECONDED BY REPRESENTATIVE KONOLD, THAT THE EXECUTIVE BOARD ACCEPT ISSUE MEMORANDUM 04-03 FOR DISTRIBUTION TO ALL LEGISLATORS. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

Issue Memorandum 04-04—Conservation Easements—Mr. Tom Magedanz, Principal Research Analyst.

**REPRESENTATIVE KONOLD MOVED, SECONDED BY SENATOR KOETZLE, THAT THE EXECUTIVE BOARD ACCEPT ISSUE MEMORANDUM 04-04 FOR DISTRIBUTION TO ALL LEGISLATORS. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

Chair Smidt stated that a lot of work and research has been accomplished by staff and asked for input from the Board on what policy it wants to implement regarding the issue memorandums as far as making them an official document of the Legislature.

**SENATOR DEMPSTER MOVED, SECONDED BY SENATOR KOETZLE, THAT ONCE AN ISSUE MEMORANDUM IS ADOPTED BY THE EXECUTIVE BOARD IT THEN BECOMES AN OFFICIAL DOCUMENT OF THE LEGISLATURE. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

The Executive Board recessed at 4:45 p.m. and reconvened at 8:35 a.m. on Tuesday, November 23, 2004.

### **Tuesday, November 23, 2004**

#### **Report of Investment Council Subcommittee And Consideration of Investment Officer's Salary Bonus**

Mr. Roy Burr, Investment Council Chair, Mr. Steve Myers, Retiring State Investment Officer, and Mr. Matt Clark, New Investment Council Officer, discussed the Council's annual report. The transmittal letter; remarks by Chairman Alan Greenspan; graphs showing the annualized total fund ending June 30, 2004; growth in assets as of June 30, 2004; South Dakota Retirement System (SDRS) asset growth comparison; management fees per \$1,000; dollar percentage impact of investment performance total returns and earnings are compiled and labeled **Document #26**. Also distributed were copies of asset figures for SDRS and Cement Plant Retirement as of November 14, 2004, and the Dakota Cement Trust, Education Enhancement Trust, Health Care Trust, and School and Public Lands as of October 31, 2004 (**Document #27**). A summary of trust fund value and asset allocation for the Health Care Trust, Education Enhancement Trust, Dakota Cement Trust, and School and Public Lands was also distributed (**Document #28**).

Mr. Burr said that the Investment Office is embarking on a new era. He said that the Council contracted with a national search firm to lead a national search for a new State Investment Officer. The firm contacted more than 180 potential candidates and after two days of intensive interviews of four qualified candidates recommended by the search firm, the

Investment Council unanimously selected Deputy Investment Officer, Matt Clark, to become the next Chief Investment Officer effective January 10, 2005. The search firm characterized Mr. Clark as "clearly the most qualified."

Mr. Burr said that the Investment Council will be counting down to four decades beginning January 10, 2005, and that a performance of anywhere near the top quartile performance for the fourth decade should be looked upon as outstanding success. He said that it would be premature to take a measure of the fourth decade until it is winding down.

Mr. Myers said that about a decade ago, the Investment Council became concerned about high expectations on Wall Street and in 1993-1994 started warning investors about how expectations need to be lowered. He said that realistic expectations would be a better measure of success in the future.

Mr. Clark said that SDRS continues to be one of the strongest retirement systems in the country. He said that the Council's internal management cost is \$0.88 per \$1,000 of assets. Mr. Clark said that figure is one of which to be particularly proud.

**REPRESENTATIVE MICHELS MOVED, SECONDED BY SENATOR KOETZLE, THAT THE EXECUTIVE BOARD GO INTO EXECUTIVE SESSION TO CONSIDER THE INVESTMENT OFFICER'S SALARY BONUS AND THE NEWLY APPOINTED INVESTMENT OFFICER'S SALARY AND BONUS STRUCTURE. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

The Board went into executive session at 9:10 a.m. and came out of executive session at 9:35 a.m.

**REPRESENTATIVE MICHELS MOVED, SECONDED BY REPRESENTATIVE CRADDUCK, THAT THE NEWLY APPOINTED INVESTMENT OFFICER'S BASE SALARY BE \$248,900 AND TO CONTINUE THE PERFORMANCE BONUS AWARD PLAN PREVIOUSLY ADOPTED.**

### **Investment Officer's Bonus Plan**

#### Section 1. Definitions.

- (1) "performance period" is the two fiscal years prior to the year in which the bonus is to be awarded.
- (2) "incentive maximum" is one-half of the investment officer's salary during the second year of the performance period.
- (3) "Investment Council capital market benchmark" is return of a portfolio mix determined by the South Dakota Investment Council during the performance period.

#### Section 2. Calculation of the bonus.

- I. multiply the incentive maximum by 0.3, and multiply that product by:
  - (a) zero if performance during the performance period versus the large plan universe does not reach the 40th percentile;
  - (b) 0.2 if performance during the performance period versus the large plan universe reaches the 40th percentile;

(c) 0.5 if performance during the performance period versus the large plan universe reaches the 33rd percentile;

(d) 1.0 if performance during the performance period versus the large plan universe reaches the 25th percentile.

II. multiply the incentive maximum by 0.3, and multiply that product by:

(a) zero if performance during the performance period does not exceed the Investment Council capital market benchmark by 0.25%;

(b) 0.2 if performance during the performance period exceeds the Investment Council capital market benchmark by at least 0.25%;

(c) 0.4 if performance during the performance period exceeds the Investment Council capital market benchmark by at least 0.50%;

(d) 0.6 if performance during the performance period exceeds the Investment Council capital market benchmark by at least 0.75%;

(e) 0.8 if performance during the performance period exceeds the Investment Council capital market benchmark by at least 1.00%;

(f) 1.0 if performance during the performance period exceeds the Investment Council capital market benchmark by at least 1.25%.

III. multiply the incentive maximum by 0.4, and multiply that product by the quotient of the aggregate bonus earned by portfolio managers in the South Dakota Investment Council divided by the aggregate potential bonus of portfolio managers in the South Dakota Investment Council for the performance period.

IV. The bonus is the sum of the results of steps I, II, and III.

**MOTION PREVAILED UNANIMOUSLY ON A ROLL CALL VOTE WITH 12 VOTING AYE AND 3 EXCUSED. Those voting AYE: Dempster, Dennert, Greenfield, Koetzle, Olson, Bartling, Cradduck, Heineman, Konold, Lange, Michels, and Smidt. Those EXCUSED: Brown, McCracken, and Williamson.**

**REPRESENTATIVE MICHELS MOVED, SECONDED BY SENATOR DENNERT, THAT THE EXECUTIVE BOARD APPROVE THE AWARDING OF A BONUS OF \$112,053.37 TO THE STATE INVESTMENT OFFICER STEVE MYERS FOR THE TWO-YEAR PERIOD ENDING JUNE 30, 2004. MOTION PREVAILED UNANIMOUSLY ON A ROLL CALL VOTE WITH 12 VOTING AYE AND 3 EXCUSED. Those voting AYE: Dempster, Dennert, Greenfield, Koetzle, Olson, Bartling, Cradduck, Heineman, Konold, Lange, Michels, and Smidt. Those EXCUSED: Brown, McCracken, and Williamson.**

**REPRESENTATIVE MICHELS MOVED, SECONDED BY REPRESENTATIVE KONOLD, THAT THE EXECUTIVE BOARD RECOMMEND TO THE SPECIAL COMMITTEE ON APPROPRIATIONS THAT THE INVESTMENT COUNCIL'S FY 2006 BUDGET REQUEST BE APPROVED. MOTION PREVAILED ON A ROLL CALL VOTE WITH 11 VOTING AYE, 1 VOTING NAY, AND 3 EXCUSED. Those voting AYE: Dempster, Dennert, Koetzle, Olson, Bartling, Cradduck, Heineman, Konold, Lange, Michels, and Smidt. Those voting NAY: Greenfield. Those EXCUSED: Brown, McCracken, and Williamson.**



**Dr. Tad Perry**, Executive Director, Board of Regents, reported on the Midwestern Higher Education Compact Commission Meeting held in Kansas City, Missouri, on November 17-19, 2004. He distributed copies of a meeting agenda (**Document #29**).

Dr. Perry summarized the discussion at the meeting as follows:

- Compact program savings—Dr. Perry distributed copies of "Midwestern Higher Education Compact Program Savings for 12 Months" (**Document #30**);
- Student exchange program—Dr. Perry said that everyone is doing everything that they can to maintain and expand enrollment; and
- Policy analysis.

Dr. Perry also distributed copies of a report on dental school information (**Document #31**).

Dr. Perry said that the Board of Regents is satisfied with membership in the WICHE Professional Students Exchange Program.

**REPRESENTATIVE MICHELS MOVED, SECONDED BY REPRESENTATIVE CRADDUCK, THAT THE EXECUTIVE BOARD DECLINE MEMBERSHIP IN THE MIDWESTERN HIGHER EDUCATION COMPACT BASED ON INFORMATION DISCUSSED BY DR. PERRY. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

The Board recessed at 10:00 a.m. and reconvened at 11:30 a.m.

### **Constitutional Revision Commission Report**

The Honorable Robert A. Miller, Chair of the Constitutional Revision Commission, and **Justice Steven Zinter**, member of the Commission, and **Mr. Brent Wilbur**, member of the Commission, reported on the consensus of the commission that it does not have the authority to address the style and form veto and the executive line item veto because it was directed to review Article III and related statutes, and executive vetoes are not addressed in Article III.

With the consensus of the Board, Chair Smidt declared that no action concerning vetoes would be taken at this meeting, but the Board could discuss the situation at another meeting.

Chair Miller said that the Commission would like to inform legislators and receive input from legislators concerning its deliberations and is requesting use of a meeting room in the Capitol sometime in the early days of the 2005 Legislative Session to schedule an open forum for such a purpose.

Chair Smidt expressed approval for such a forum. He said that the Chairs of the Judiciary Committees should be contacted to find out whether some arrangement could be worked out regarding availability and times for a room.

Chair Miller said that the Commission would coordinate with the Judiciary Committee Chairs.

### **Report on Special Committee on Appropriations Budget Subcommittee**

Representative Cradduck reported that the Budget Subcommittee agrees with the Board's decision to request \$500,000 to develop the high tech meeting room.

Representative Cradduck also reported that the subcommittee wants the Special Committee on Appropriations to be able to have its own economic forecast information. She said that discussions are on-going regarding the funding of a legislative FTE to develop economic forecasting and provide economic information to the Legislature. Representative Cradduck said that this most likely would be accomplished by either providing current staff opportunities to become proficient in economic forecasting or hiring an individual who is capable of providing that information.

**REPRESENTATIVE CRADDUCK MOVED, SECONDED BY SENATOR DEMPSTER, THAT THE EXECUTIVE BOARD APPROVE HIRING ANOTHER FTE TO PROVIDE ECONOMIC FORECAST INFORMATION TO THE LEGISLATURE.**

Responding to Board questions, Representative Cradduck stated that the person hired also would be expected to perform other functions in the office.

Representative Konold said that in his opinion it is very important for the Legislature to have such an individual to provide economic projections and expressed support for hiring an FTE to accomplish that objective.

**MOTION PREVAILED ON A ROLL CALL VOTE WITH 10 VOTING AYE, 1 VOTING NAY, AND 4 EXCUSED. Those voting AYE: Dempster, Dennert, Koetzle, Olson, Bartling, Cradduck, Heineman, Konold, Lange, and Smidt. Those voting NAY: Greenfield. Those EXCUSED: Brown, McCracken, Michels, and Williamson.**

At this time, Senator Dempster asked whether the Executive Board should set up a conference call with Mr. Peterson one of the first days of session and also order a copy of his book.

Chair Smidt said that the issue first would have to go to the Appropriations Committee.

### **Implementing the Baldrige Model into the Agency Review Process and Request for Department of Legislative Audit Review of Highway Safety Program**

**Senator Ed Olson** said that the Baldrige Model could be used as a model when reviewing state agencies in a common framework and that all state agencies could be required to be familiar with the model. Senator Olson commented that he believes that the Department of Public Safety would be a good agency to review during the 2005 interim because it has been undergoing a lot of additions and changes.

Representative Heineman expressed support for the Baldrige Model or another type of model to be used when reviewing state agencies so that there is a process to follow. In addressing the Baldrige Model, Representative Heineman said that she is particularly interested in performance results; measurement, analysis, and knowledge management; and staff focus.

At the invitation of Chair Smidt, **Mr. Reuben Bezpaletz**, Chief of Research and Legal Services, and Mr. Holwegner addressed the Board concerning agency reviews. One of the items Mr. Bezpaletz mentioned is to discourage review committees from thinking that there has to be some kind of legislation involved. Regarding agencies to review next interim, Mr. Bezpaletz encouraged the Board to select agencies that garner a lot of interest, such as the Department of Public Safety and the Department of Agriculture.

Mr. Holwegner said that budgeting in South Dakota is an incremental process—year-to-year enhancements. South Dakota is not the only state to have these types of questions regarding agency reviews. Mr. Holwegner said that the federal government is more and more asking states to quantify their quality of service to the public. He said that objectives and goals of agencies are definitely under the direction of the Legislature.

Senator Olson suggested that the incoming Executive Board develop a framework to guide the sunset committees in their deliberations.

Senator Dempster said that perhaps staff could devise a model that they think would be appropriate.

#### **Selection of Agencies for Review during 2004 Interim**

Stating that the Department of Public Safety is a reorganized agency and is experiencing a large flow-through of federal dollars, **SENATOR OLSON MOVED, SECONDED BY SENATOR GREENFIELD, THAT THE EXECUTIVE BOARD SELECT THE DEPARTMENT OF PUBLIC SAFETY FOR REVIEW DURING THE 2005 INTERIM. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

**REPRESENTATIVE LANGE MOVED, SECONDED BY REPRESENTATIVE CRADDOCK, THAT THE EXECUTIVE BOARD SELECT THE DEPARTMENT OF AGRICULTURE FOR REVIEW DURING THE 2005 INTERIM. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

#### **Staff Direction**

**SENATOR OLSON MOVED, SECONDED BY SENATOR DENNERT, THAT THE EXECUTIVE BOARD DIRECT STAFF TO INVESTIGATE A WORKING FRAMEWORK FOR FURTHER AGENCY REVIEWS. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

Senator Olson asked Legislative Audit to conduct a mini audit of NCLB.

Also, **SENATOR OLSON MOVED, SECONDED BY REPRESENTATIVE CRADDUCK, THAT THE EXECUTIVE BOARD DIRECT LEGISLATIVE AUDIT TO CONDUCT A HIGHWAY SAFETY PERFORMANCE AUDIT. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

At this time, Mr. Fry presented Chair Smidt with a plaque in recognition of his service as Executive Board Chair for 2003-2004.

Mr. Fry also presented certificates of appreciation to Representatives Cradduck, Lange, and Konold for their service on the Executive Board.

### **Adjournment**

**REPRESENTATIVE LANGE MOVED, SECONDED BY REPRESENTATIVE HEINEMAN, THAT THE EXECUTIVE BOARD ADJOURN. MOTION PREVAILED UNANIMOUSLY ON A VOICE VOTE.**

The Executive Board adjourned at 12:30 p.m.



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